

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BRADLEY J. S.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C22-5215 RSM

**ORDER AFFIRMING AND  
DISMISSING THE CASE**

Plaintiff appeals the ALJ's 2022 denial of his applications for Disability Insurance Benefits and Supplemental Security Income. Plaintiff contends the ALJ erred by improperly rejecting his symptom testimony. Dkt. 10, at 1. As discussed below, the Court **AFFIRMS** the Commissioner's final decision and **DISMISSES** the case with prejudice.

**BACKGROUND**

This is the fourth time Plaintiff seeks review of his 2012 applications for Disability Insurance Benefits and Supplemental Security Income. In June 2014, Administrative Law Judge ("ALJ") Tom Morris found Plaintiff not disabled. Administrative Record ("AR") 7–25. Plaintiff sought review in this Court, and in 2016, this Court reversed ALJ Morris's decision and remanded the matter for further consideration of the ALJ's findings at step two, the medical opinion evidence, and Plaintiff's testimony regarding his ulcerative colitis. AR 585–92. On

1 remand, ALJ Morris conducted two hearings where Plaintiff requested a closed period of  
2 disability from June 1, 2012, through December 31, 2015. AR 462, 1886. ALJ Morris issued a  
3 decision in January 2018 again finding Plaintiff not disabled. AR 434–56. Plaintiff again  
4 appealed the ALJ’s decision, and in December 2018, this Court reversed the ALJ’s decision for  
5 further consideration of the medical opinion evidence by a new ALJ. AR 1391–98.

6 On remand, ALJ Glenn Meyers held a hearing and took testimony from medical expert  
7 Dr. Ashok Jilhewar. AR 1328–63. ALJ Meyers issued a decision in February 2020, finding  
8 Plaintiff not disabled. AR 1924–44. Plaintiff appealed the ALJ’s decision, and in December  
9 2020, this Court reversed the ALJ’s decision in part to clarify the relevant period and reevaluate  
10 the medical opinion evidence. *See* AR 1950–60. On January 25, 2022, ALJ Meyers held a  
11 hearing on remand where Plaintiff confirmed that the relevant period is June 1, 2012, through  
12 December 31, 2015. AR 1915. In February 2022, ALJ Meyers issued a decision again finding  
13 Plaintiff not disabled. AR 1183–1902. Plaintiff now seeks judicial review of the ALJ Meyers’s  
14 2022 decision, contending only that the ALJ did not provide a clear and convincing reason to  
15 reject his symptom testimony. Dkt. 10, at 2–4.

## 16 DISCUSSION

17 The Court may reverse ALJ Meyer’s decision only if it is legally erroneous or not  
18 supported by substantial evidence of record. *Ford v. Saul*, 950 F.3d 1141, 1154 (9th Cir. 2020).  
19 The Court must examine the record but cannot reweigh the evidence or substitute its judgment  
20 for the ALJ’s. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When evidence is  
21 susceptible to more than one interpretation, the Court must uphold the ALJ’s interpretation if  
22 rational. *Ford*, 950 F.3d at 1154. Also, the Court “may not reverse an ALJ’s decision on  
23 account of an error that is harmless.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

1 At the 2022 hearing before ALJ Meyers, Plaintiff testified to having difficulty with long  
2 standing and walking, as well as stomach pain and cramps. AR 1916. Plaintiff stated that  
3 because of these symptoms, he typically had to take three to four breaks during an eight-hour  
4 workday so he could lie or sit down and refrain from moving. AR 1917. Plaintiff explained the  
5 breaks were often unpredictable and each would last 30 minutes to an hour. AR 1916.

6 Where, as here, an ALJ determines a claimant has presented objective medical evidence  
7 establishing underlying impairments that could cause the symptoms alleged, and there is no  
8 affirmative evidence of malingering, the ALJ can only reject the claimant's testimony as to  
9 symptom severity by providing "specific, clear, and convincing" reasons supported by  
10 substantial evidence. *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017).

11 A claimant's testimony contradicting the medical record is such a reason. *See Carmickle*  
12 *v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008). Here, in rejecting Plaintiff's  
13 testimony, the ALJ cited Dr. Jilhewar's testimony and Plaintiff's treatment notes showing his  
14 symptoms were managed during the relevant period. AR 1893–94.

15 During the 2020 hearing, Dr. Jilhewar testified that based on a review of Plaintiff's  
16 records, Plaintiff is capable of "standing and walking for six hours in any combination in an  
17 eight-hour workday" with normal breaks, as well as sitting for up to six hours a day. *See* AR  
18 1346. The treatment notes relied on by both Dr. Jilhewar in formulating his opinion and the ALJ  
19 in rejecting Plaintiff's testimony show Plaintiff reported improvement or denied abdominal pain  
20 or cramps during the relevant period. For example, in a March 2013 appointment, a month after  
21 Plaintiff was prescribed medication, Plaintiff reported that he was "doing much better,"  
22 Plaintiff's abdominal pain and cramps were noted as having been "resolved," and his abdomen  
23 was observed as "soft, nontender," and without rigidity or guarding. *See* AR 405–06. In a

1 November 2013 appointment, Plaintiff reported that he was “doing well,” his gastrointestinal  
2 findings were normal, and his doctor asked that he continue his medication. AR 394–95. The  
3 following month, Plaintiff reported that he was “reasonably pleased with how he is doing at the  
4 present time,” and that he was experiencing “small amounts of cramps.” AR 391. In September  
5 2014, Plaintiff reported that his symptoms were doing “much better,” and on good days, he “does  
6 not have any . . . pain, or cramps.” *See* AR 831. In October 2015, Plaintiff denied abdominal  
7 pain or cramps. AR 824–25. The record also indicates Plaintiff experienced symptoms if he was  
8 not compliant with his dietary recommendations. For example, in April 2015, when Plaintiff  
9 presented for an evaluation of abdominal pain and diarrhea, he explained that “symptoms started  
10 when he was eating really poorly for about a month,” but that when he eats well, his symptoms  
11 improve. *See* AR 828. Notably, Plaintiff reported having an upset stomach but described that it  
12 was “not real pain.” *See id.* Given that the cited treatment notes during the relevant period  
13 shows Plaintiff either explicitly denied stomach pain or cramps, or that the symptoms improved  
14 from medication, especially when Plaintiff was compliant with his diet, the ALJ could  
15 reasonably reject plaintiff’s testimony for its inconsistency with the medical evidence.

16 The ALJ could also reasonably reject Plaintiff’s testimony based on his activities during  
17 the relevant period. AR 1895. An ALJ may discount a claimant’s symptom testimony when it is  
18 inconsistent with the claimant’s general activity level. *See Molina*, 674 F.3d at 1112–13;  
19 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1040 (9th Cir. 2007). Here, Plaintiff reported going to  
20 casinos, playing basketball, and going to the gym two to three times a week to walk and jog. AR  
21 378 (“extended gambling spree starting in Las Vegas . . . which parlayed into weeks of gambling  
22 here at regional casinos”), 354, 831, 1048. Plaintiff’s ability to partake in these activities  
23 undermines his testimony regarding his difficulty with long standing and walking, thus the Court

1 cannot say that the ALJ erred in rejecting Plaintiff's testimony based on its inconsistency with  
2 his activities.

3 In sum, because the ALJ provided at least one clear and convincing reason, supported by  
4 substantial evidence, to reject Plaintiff's testimony, the Court accordingly finds that the ALJ did  
5 not err and affirms the ALJ's decision.

6 **CONCLUSION**

7 For the foregoing reasons, the Commissioner's final decision is **AFFIRMED** and this  
8 case is **DISMISSED** with prejudice.

9 DATED this 30<sup>th</sup> day of August, 2022.

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12 RICARDO S. MARTINEZ  
13 CHIEF UNITED STATES DISTRICT JUDGE  
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